

APPLICANTS:
SP LLC and Dimitrios Mathioudakis

REQUEST: A special exception pursuant to
Section 267-53H(7) of the Harford County Code
to permit a restaurant in the B1 District

HEARING DATE: December 13, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5455

ZONING HEARING EXAMINER'S DECISION

APPLICANT: SP LLC

CO-APPLICANT: Dimitrios Mathioudakis

LOCATION: 2510 Philadelphia Road, Edgewood
Tax Map: 61 / Grid: 01 / Parcel: 186
First Election District

ZONING: B1 / Neighborhood Business District

REQUEST: A special exception pursuant to Section 267-53H(7) of the Harford County
Code to permit a restaurant in the B1 District.

TESTIMONY AND EVIDENCE OF RECORD:

First for the Applicant testified Sotirios Strumpis, who appeared as a spokesperson for both the owner and the proposed tenant of the subject property. Mr. Strumpis stated that Dimitrios Mathioudakis, Co-Applicant, was the contract purchaser of the property, with the contract subsequently being assigned to 2510 Philadelphia Road, LLC. Mr. Strumpis and Mr. Mathioudakis are the members of the purchasing LLC.

The subject property, which is zoned B1 and is approximately .768 acre in size, is to be used as a restaurant operating as My Three Sons, Edgewood, Inc. This business will also be owned by Mr. Strumpis and Mr. Mathioudakis.

The subject property is improved by a convenience store which has been in use since 1988. The business proposed by the Applicant would be a restaurant serving pizza, subs, and full course meals. The business will be similar to that now being successfully operated in Churchville, by the same parties.

The hours of the restaurant will be from 7:00 a.m. to 9:00 p.m., Monday through Thursday; and from 7:00 a.m. to 10:00 p.m. on Friday, Saturday, and Sunday. There will be sixty-nine (69) seats for patrons.

Case No. 5455 – SP LLC and Dimitrios Mathioudakis

The Applicants plan no major exterior changes. The footprint of the building will not be expanded. Some renovations will take place to the interior, but there will be no structural alterations.

Mr. Strumpis believes the business will be very successful, and that there is need in this particular area for such a facility. As the building is now vacant, Mr. Strumpis believes that a conversation to a restaurant will benefit the community.

Mr. Strumpis indicated that all conditions proposed by the Harford County Department of Planning and Zoning are acceptable.

Next testified Anthony McClune for the Harford County Department of Planning and Zoning. Mr. McClune stated that the property first began its use as a convenience store in approximately 1988. The proposed restaurant will not expand the existing structure. Only cosmetic changes are planned to the exterior.

Harford County Code requires one (1) parking space per three (3) customer seats. Accordingly, the restaurant can have a maximum of sixty-nine (69) customer seats.

Access must be from an arterial or collector road. Mr. McClune indicated that Maryland Route 7 is classified as an arterial road by the Harford County Transportation Plan.

Mr. McClune further testified that the proposal can meet or exceed all applicable Harford County standards. The use is compatible with existing uses in the community. Traffic impact should be no greater than what has in the past been generated by the now closed convenience store. Mr. McClune sees no adverse impact upon the community.

No evidence or testimony was offered in opposition to the requested special exception.

APPLICABLE LAW:

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Case No. 5455 – SP LLC and Dimitrios Mathioudakis

The Applicants are requesting a special exception to Section 267-53H(7) of the Harford County Code which states:

“(7) Restaurants. These uses may be granted in the VB and B1 Districts provided that:

(a) The parking and access requirements of this Part 1 shall apply.

(b) The use is located with direct access to an arterial or collector road.”

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is a .768 acre parcel located on the northwest corner of Philadelphia Road (Maryland Route 7), and Maryland Route 24. The property is zoned B1, which allows neighborhood business uses. The property is improved by a structure which for almost sixteen (16) years had been used as a convenience store. Access to the property is from Route 7, a Harford County arterial road. There are twenty-three (23) parking spaces on-site, sufficient for a restaurant with the seating capacity of up to sixty-nine (69) patrons.

A restaurant as proposed by the Applicants is only allowed in a B1 District as a special exception. A special exception is a use which has been legislatively determined to be compatible with uses in its particular district, provided certain requirements are met. (See Eastern Outdoor Advertising Company v. Mayor and City Council, 128 Md. App. 264 (1999)). Among those requirements are those specific conditions of to Section 267-53H(7) of the Harford County Code which generally requires certain parking and access requirements be met, including that the use be located with direct access to an arterial road. It is found, based upon the undisputed testimony and evidence of record, that these specific requirements are met.

Furthermore, the more generalized standards of to Section 267-9I, Limitations, Guides and Standards, must be addressed. These standards are applicable to special exception requests, and are discussed as follows:

(1) The number of persons living or working in the immediate area.

Evidence of record indicates that the use would be of service to the community and will have no adverse impact on the area or neighbors, or on the number of people living or working in the area.

Case No. 5455 – SP LLC and Dimitrios Mathioudakis

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Access to the property is from Maryland Route 7, Philadelphia Road, which is a Harford County arterial road. Testimony of record indicated that the proposed traffic impact would be no greater than that of the convenience store which had been located on the property for many years. Accordingly, it is found that there will be no adverse impact on traffic conditions.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There use will be compatible with the neighborhood. There is no indication that the request will have an adverse economic impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There is no evidence that any of these conditions would be generated or, if generated, would have an adverse impact on the residents or surrounding property.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and Maryland State Police will provide police protection. The Abingdon and Edgewood Volunteer Fire Companies will provide the primary fire protection and emergency services. Water and sewer facilities will be provided by public water and sewer. A company of the Applicants' choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The use is consistent with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

Case No. 5455 – SP LLC and Dimitrios Mathioudakis

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such natural features or opportunities have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

In addition, the Applicant must also show that the proposed request does not violate the guidelines as established by Schultz v. Pritts, 291 Md. 1 (1981). Schultz requires that the proposed use be examined to determine if its impact would be greater at the location proposed than it would be if located elsewhere in the district. This requires a specific review of not only the use, but also of the surrounding property features. If it is found that the potential impacts of the use are greater at the location proposed than they would be at other locations, then the use must be denied.

A review of the testimony and evidence of record leads to the uncontradicted finding that there would be no impact at this location which would be any greater than at any other location within its district. The property is appropriately zoned; it is a corner property at a relatively major intersection; it has access from an arterial road; and it has adequate parking. To all outward appearances, and based upon all objective standards, the impact on the community should be no greater than the impact of the convenience store over the years, and certainly no greater here than elsewhere within its district.

Accordingly, it is found that the proposed use meets all applicable specific and general special exception standards.

Case No. 5455 – SP LLC and Dimitrios Mathioudakis

CONCLUSION:

It is accordingly recommended that the requested special exception be granted subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the conversion of the existing structure for a restaurant.
2. The Applicants shall prepare a landscaping plan that provides landscaping around the perimeter of the parking lot.
3. The restaurant shall be limited to a maximum of sixty-nine (69) seats.

Date: January 11, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner